UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH

RESTOREWORKS, LLC

and Case Nos. 29-CA-25366
29-CA-25465

LOCAL UNION 522, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

DECISION

Statement of the Case

MICHAEL A. MARCIONESE, Administrative Law Judge. I heard this case in Brooklyn, New York on April 10, 2003.[1] Local Union 522, International Brotherhood of Teamsters, AFL-CIO ("the Union") filed the charges in this case on January 13 and March 4, respectively. An order consolidating cases, consolidated complaint and notice of hearing issued, based upon these charges, on March 11, alleging that the Respondent, Restoreworks, LLC, violated Section 8(a)(1), (3) and (5) of the Act. The Respondent failed to file an answer to the consolidated complaint and did not appear at the scheduled hearing. Counsel for the General Counsel moved for summary judgment at the hearing. On April 10, I issued an Order to Show Cause giving the Respondent two weeks to show cause why the General Counsel's motion should not be granted. No response was filed within the time allowed.

The complaint and notice of hearing advised the Respondent that it was required, pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, to file an answer to the complaint within 14 days of service of the complaint, i.e. by March 25. The Respondent was further advised that, if it failed to file an answer, "all of the allegations in the consolidated complaint shall be deemed to be admitted to be true, and may be so found by the Board." Counsel for the General Counsel also sent, by certified mail, a letter to the Respondent, on March 26, reminding the Respondent of its obligation to file an answer to the complaint and the consequences of a failure to do so. The Respondent was given additional time, until April 2, to file an answer and was advised that the General Counsel would move for summary judgment if no answer was filed by that date. As previously noted, I also gave the Respondent one last chance to avoid summary judgment by issuing the Show Cause Order on April 10. The Respondent having failed to file an answer to the consolidated complaint and having failed to show cause for its failure to do so, I shall grant the General Counsel's Motion for Summary Judgment.[2] Accordingly, all of the allegations of the complaint are deemed to be true and I hereby make the following

[1] All dates are in 2003 unless otherwise indicated.
[2] *Calyer Architectural Woodworking Corp.,* 338 NLRB No. 33 (September 30, 2002).

Findings of Fact

I. Jurisdiction

The Respondent, a domestic corporation, with its principal office and place of business located at 119 14th Street, Brooklyn, New York, is engaged in the building construction and restoration business. In the conduct of its business, the Respondent annually provides services valued in excess of $50,000 for customers located within the State of New York who meet the Board's standards for the assertion of jurisdiction. I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

At all material times, Michael Harvylkoff has held the position of Respondent's president and has been an agent of the Respondent, acting on its behalf.

Roofing and Sheet Metal Crafts Institute, Inc., an Employer Association ("the Association"), has been an organization composed of employers engaged in the construction industry and exists for the purpose, inter alia, of representing its employer members in negotiating and administering collective-bargaining agreements. On or about July 1, 2000, the Union entered into a collective-bargaining agreement with the Association, which is effective for the period July 1, 2000 until June 30, 2003.

On or about April 27, 2001, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit of its employees described below and, since that date, the Union has been recognized as such representative by the Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the act. On or about April 27, 2001, the Respondent became a member of the Association and agreed to be bound by the July 1, 2000 collective-bargaining agreement described above.

The following employees who are employed by members of the Association, including the Respondent ("the Unit"), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees, excluding office and clerical employees, guards and supervisors as defined by the Act.

For the period July 1, 2000 to June 30, 2003, based upon Section 9(a) of the Act, the Union has been the limited exclusive collective bargaining representative of the above Unit.

On or about November 27, 2002, the Respondent, by Harvylkoff, by telephone, threatened to discharge employees because of their Union activity.

On or about December 12, 2002, the Respondent discharged its employee Owen Atkinson and since that date has failed and refused to reinstate, or to offer to reinstate, Atkinson to his former position of employment. The Respondent discharged and failed to reinstate Atkinson because he engaged in Union activity, and to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The most recent collective-bargaining agreement, described above, requires, in Article 6, that the Respondent make monthly payroll deductions of Union dues and remit the authorized dues deductions to the Union monthly, by no later than five (5) days after the Respondent deducts the dues.

The most recent collective-bargaining agreement, described above, requires, in Articles 20 and 21, that the Respondent make monthly contributions to the Local 522 Roofers Division Pension Fund ("Pension Fund") and to the Local 522 Roofers Division Welfare Fund ("Welfare Fund"), respectively.

The subjects of the deduction and remittance of Union dues and contributions to the Pension Fund and the Welfare Fund relate to the wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects of bargaining within the meaning of Section 8(d) of the Act.

From on or about September 1, 2002, until the present, the Respondent has unilaterally modified the terms of the collective-bargaining agreement described above by deducting Union dues from employees' paychecks on a weekly instead of monthly basis and by ceasing to remit the dues so deducted to the Union, and by ceasing to make contributions to the Pension Fund and to the Welfare Fund. The Respondent made these unilateral modifications to the collective-bargaining agreement without the Union's consent.

On or about December 16, 2002, the Respondent withdrew its recognition of the Union as the exclusive collective bargaining representative of the Unit and repudiated the collective-bargaining agreement described above.

Conclusions of Law

1. By threatening to discharge employees because of their Union activity, the Respondent has interfered with, restrained and coerced its employees in their exercise of the rights guaranteed in Section 7 in violation of Section 8(a)(1) of the Act.

2. By discharging and failing to reinstate Atkinson because he engaged in Union activity, the Respondent has discriminated in regard to the hire, tenure, or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act.

3. By unilaterally modifying the collective-bargaining agreement and withdrawing recognition from the Union, the Respondent has failed and refused to bargain collectively with its employees' exclusive representative within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(1) and (5) of the Act.

4. By the above conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged Owen Atkinson, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

As a remedy for the Respondent's unilateral modification of the collective-bargaining agreement and withdrawal of recognition from the Union, I shall recommend that it be ordered to recognize the Union as the limited exclusive collective bargaining representative of its employees in the Unit and abide by the terms of the existing collective-bargaining agreement and any automatic renewal or extension thereof. The Respondent shall also be ordered to remit to the Union all the dues that it has deducted from employees' paychecks since September 1, 2002, and to make its employees whole for its unilateral modification of the collective-bargaining agreement by making all Pension Fund and Welfare Fund contributions that have been due since September 1, 2002 and any additional amounts applicable to delinquent payments in accordance with *Merryweather Optical Co.,* 240 NLRB 1213, 1216 (1979).[3] Further, the Respondent shall reimburse the unit employees for any expenses ensuing from its failure to make the required contributions to the Pension Fund and the Welfare Fund since September 1, 2002, as set forth in *Kraft Plumbing & Heating,* 252 NLRB 891, fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). All payments to unit employees shall be computed in the manner set forth in *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F.2d 940 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Restoreworks, LLC, Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to discharge employees because of their Union activity.

(b) Discharging or otherwise discriminating against any employee for supporting Local Union 522, International Brotherhood of Teamsters, AFL-CIO ("the Union"), or any other union.

(c) Making unilateral modifications to the collective-bargaining agreement between the Union and Roofing and Sheet Metal Crafts Institute, Inc., without the Union's consent.

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[3] To the extent that an employee has made personal contributions to the Pension or Welfare Fund that have been accepted by the Funds in lieu of the Respondent's contributions during the period of delinquency, the Respondent will reimburse the employee, but the amount of any such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the Funds.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Withdrawing recognition from the Union as the limited exclusive collective bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time employees, excluding office and clerical employees, guards and supervisors as defined by the Act.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Owen Atkinson full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Atkinson whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to Atkinson's unlawful discharge, and within 3 days thereafter notify Atkinson in writing that this has been done and that the discharge will not be used against him in any way.

(d) Recognize the Union as the limited exclusive collective bargaining representative of the employees in the above Unit and abide by the terms of the collective-bargaining agreement between the Union and the Association.

(e) Remit to the Union all dues that have been deducted from employees' paychecks since September 1, 2002.

(f) Make all contractually required contributions to the Pension Fund and the Welfare Fund that have not been made on behalf of its employees in the above Unit since September 1, 2002 and reimburse employees for any expenses ensuing from its failure to make the required payments, in the manner set forth in the remedy section of this decision.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its facility in Brooklyn, New York copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are

[5] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 1, 2002.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

Michael A. Marcionese
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT threaten you with discharge for engaging in union activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Local Union 522, International Brotherhood of Teamsters, AFL-CIO (“the Union”) or any other union.

WE WILL NOT make unilateral modifications to the collective-bargaining agreement between the Union and Roofing and Sheet Metal Crafts Institute, Inc., without the Union's consent.

WE WILL NOT withdraw recognition from the Union as your exclusive collective bargaining representative during the term of any collective-bargaining agreement we have entered into with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board’s Order, offer Owen Atkinson full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Owen Atkinson whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board’s Order, remove from our files any reference to the unlawful discharge of Owen Atkinson, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

WE WILL recognize the Union as your limited exclusive collective bargaining representative and WE WILL abide by the terms of our collective-bargaining agreement with the Union.

WE WILL remit to the Union all dues that have been deducted from your paychecks since September 1, 2002.

WE WILL make all contractually required contributions to the Pension Fund and the Welfare Fund that have not been made on your behalf since September 1, 2002 and WE WILL reimburse you for any expenses ensuing from our failure to make the required payments.

RESTOREWORKS, LLC

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor, Brooklyn, NY 11201-4201

(718) 330-7713, Hours: 9 a.m. to 5:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (718) 330-2862.